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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/764,617	01/16/2001	Gene A. Bornzin	A01P1002	7875

36802 7590 02/04/2005

PACESETTER, INC.
15900 VALLEY VIEW COURT
SYLMAR, CA 91392-9221

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/764,617

Applicant(s)

Examiner

Frances P. Oropeza

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-8, 10-19 and 21-25.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

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Frances P. Oropeza
Art Unit 3762

1-24-05

Continuation of 5. does NOT place the application in condition for allowance because:

The Applicant's arguments filed 1/14/05 have been fully considered, but they are not convincing.

The Applicant argues Mann et al. does not teach the claimed invention of a control means for generating an electrogram having a visual representation of the presence and absence of a captured cardiac event the control means comprising a means for marking the captured cardiac event in the visual representation with a text marker representative of capture and means for marking absence of the captured cardiac event with a text marker representative of absence of capture in a location in the visual representation where the captured cardiac event was expected to occur. The Applicant argues figure 2 - element 202 does not contain markers representing capture or lack of capture. The Examiner agrees figure 2 - element 202 does not contain markers representing capture or lack of capture. It was not the Examiner's intent to indicate the cited figure reflected all the claim limitations, but rather the combined teachings of the cited figure and text teach the claim limitations, specifically defining an ECG (Mann et al. figure 2 - element 202, and text col. 13 @ 62 - col. 14 @ 5) where events such as loss of capture are identified by markers in the visual representation of the ECG/ IECG (Mann et al. - col. 13 @ 62-67). The marking of both capture and loss of capture is taught in Table I.

The Applicant argues the manner in which the markers are displayed, that the marking are "in the visual representation", are not taught by Mann et al.. The Examiner disagrees. Mann et al. teach "the ECG, IECG and/or marker data" are displayed "to identify significant events or transitions (such as the loss of atrial or ventricular capture)" (col. 13 @ 62-67), the markers according to Table I including both Capture and Loss of Capture, hence teaching that the markings of capture and loss of capture are "in the visual representation" of the ECG/ IECG.

The Applicant argues limitations which are not claimed, specifically that the "CAPTURE" and "NO CAPTURE" markers are illustrated in the atrial channel display. The independent claims lack the phrase "atrial channel". Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Applicant argues that nowhere does the Mann et al. reference disclose or suggest an electrogram having markers representative of capture and the absence of capture. The Examiner disagrees. The citations in the rejection of record, figure 2 - 202; col. 8 @ 65 - col. 9 @ 2; col 13 @ 62 - col. 14 @ 5; Table I, are deemed to teach an electrogram having markers representative of capture and the absence of capture.

The Applicant argues the Powell reference does not teach "a control means for generating an electrogram having a visual representation of the presence and absence of a captured cardiac event, wherein the control means comprise means for marking the captured cardiac event in the visual representation with a text marker representative of capture and means for marking absence of the captured cardiac event with a text marker representative of absence of capture in a location in the visual representation where the cardiac event was expected to occur. The Examiner agrees Powell does not teach all these limitations; Powell was included in the rejection to teach the marker could be a text marker.

For the reasons of record and the discussion above, the rejection of record stands.

JPO
1/24/05